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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 639,868	08 16 2000	Paul R. Weber	1A0013.CP2	3205

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EXAMINER

BUSHEY, CHARLES S

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 12/23/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/639,868

Applicant(s)

WEBER ET AL

Examiner

Scott Bushey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 04 September 2002 and 14 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on 04 September 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-6 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Specifically, claims 1-6 state that the carbonation tank includes two distinct liquid inlets thereto for supplying two different liquids to the tank as separate volumes of liquid. This is incorrect and in no way is such supported by the application disclosure, as originally filed. As is clear from several portions of the instant specification and drawings, for example, Figures 19 and 27, as well as the discussion at page 4, second paragraph, pages 16-17, as they apply to the discussion of Figure 19 of the application, and page 26, lines 14-24, which refers to instant Figure 27. This is a **New Matter** rejection.

3. Claims 4 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, applicant states that the diffuser is fluidly connected to the water inlet, which is incorrect, since as correctly stated in claim 1, the diffuser is in fluid communication with the gas inlet.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brusa taken together with any one of Dean, Hudson, Austin et al, Iannelli, and Gupta et al.

Brusa (The Figure; col. 2, lines 18-47) substantially discloses applicant's invention as recited by instant claims 1-6, except for the specific disclosure that the gas inlet has a diffuser attached thereto. It is noted that providing such a diffuser on a gas inlet within a carbonating apparatus is notoriously well known within the art. Evidence of the notorious nature of such basic knowledge is provided by any one of Dean (note 40 in Fig. 4; col. 3, lines 31-40), Hudson (note 74 in Fig. 1; col. 2, lines 39-55), Austin et al (note 38 in Fig. 1; col. 2, lines 38-40, 65-66), Iannelli (note 87a in Fig. 1; col. 3, lines 43-50), and Gupta et al (note 24 in Fig. 5; col. 5, lines 37-38), taken alternatively. It would have been obvious for an artisan at the time of the

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invention, to provide the gas inlet as taught by Brusa with a diffuser outlet, in view of any one of the alternative secondary references, since such would provide a finely divided gas stream in the form of tiny bubbles, which is well known to facilitate placement of a higher percentage of the gas into solution than a simple pipe outlet that is prone to delivery of large bubbles, which larger bubbles do not easily enter into solution within the liquid due to there higher buoyancy and smaller surface area per volume of gas.

With respect to the recitation by the claims, as amended by applicant, to include two distinct liquid inlets to the carbonation tank for supplying two different liquids to the tank as separate volumes of liquid, such has not been given weight in view of the lack of support for such within the originally filed application. However, even if applicant were able to show proper support within the original disclosure for the inclusion of water and syrup inlet means into the tank, such would still be considered obvious and well within the purview of the applied prior art. Specifically, applicant should note Hudson (col. 2, lines 39-43) and Iannelli (col. 3, line 1) wherein it is suggested that the liquid input into the carbonation tank may be other than water, and at least in the case of Hudson such liquid is suggested to be in the form of premixed water and flavored syrups. Clearly it is well known within the beverage carbonation art to either post mix flavorants with carbonated water delivered from a carbonator tank, or pre-mix selected flavorants with uncarbonated water prior to carbonation of such within a carbonation tank.

Response to Arguments

7. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new grounds of rejection.

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Conclusion

8. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Bushey whose telephone number is (703) 308-3581. The examiner can normally be reached on Monday-Thursday 6:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Simmons can be reached on (703) 308-1972. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7718 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

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Scott Bushey
Primary Examiner
Art Unit 1724

csb
December 19, 2002

MMH PJS
12-19-02